



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

FEB 14 2008

Clifford Lyle Marshall, Chairman  
Hoopa Valley Tribal Council  
Post Office Box 1348  
Hoopa, CA 95546

Dear Mr. Marshall:

The Environmental Protection Agency (EPA) is hereby approving the amendments to the Water Quality Control Plan for the Hoopa Valley Indian Reservation, Resolution Number 07-37, adopted by the Hoopa Valley Tribal Council on September 13, 2007, and submitted to EPA Region 9 on October 16, 2007. EPA's approval is based on our finding that the adopted revisions to the Water Quality Control Plan are consistent with the requirements of Section 303(c) of the Clean Water Act (CWA) and EPA's implementing regulations at 40 CFR Section 131.

**Summary of Approved Revisions**

Pursuant to 40 CFR Section 131.11(a), states and tribes must adopt those water quality criteria that protect the designated uses of the waterbody. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.

EPA commends the Hoopa Valley Tribe for the effort involved in revising its Water Quality Control Plan. The revised Plan includes a definition of "Natural Background" and adopts nutrient and other related criteria for the Klamath River and Trinity River Tributary temperature criteria.

Definition of Natural Conditions: EPA hereby approves the new definition of Natural Conditions submitted by the Hoopa Valley Tribe. We note that this definition is just one part of the use of "Natural Conditions" in the Water Quality Control Plan and does not include a provision that site specific criteria can be set equal to natural background nor a procedure for determining natural background, or alternatively, a reference in the water quality standards to another document describing the binding procedure that will be used. Each of these provisions must be in place before criteria can actually be established pursuant to the "Natural Conditions" clause. This issue is discussed below in more detail.

Specific Use Water Quality Criteria for the Klamath River: EPA hereby approves the revised and new water quality criteria and finds that the proposed specific use criteria for

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the Klamath River, including pH, water column dissolved oxygen, intergravel dissolved oxygen, periphyton, microcystins and microcystis are consistent with EPA and other guidance.

Nutrient Criteria: EPA hereby approves the new total nitrogen and total phosphorus criteria for the Klamath River adopted in the Water Quality Control Plan. The approaches used in the development of the Hoopa Valley Tribe numeric nutrient criteria for total nitrogen and total phosphorus follow EPA recommended methodology and are thus supported by a substantive scientific basis.

As noted above, EPA is, in this letter, approving the Water Quality Control Plan's criteria for nutrients (total nitrogen and total phosphorus) and intergravel dissolved oxygen, in that these criteria are supported by the available scientific information. We understand that comments were received during the development of the amendments to the Water Quality Control Plan that raised concerns about whether these criteria would, under certain circumstances, specify nutrient levels that are lower than those that existed under natural conditions of the applicable waterways. In response to this issue, EPA, the Hoopa Valley Tribe, and the North Coast Regional Water Quality Control Board (Regional Board) initiated a series of discussions. As a result of these discussions, the Hoopa Valley Tribe adopted a definition of "Natural Conditions" as a limitation on certain water quality criteria. See, for example, page 48 of the Water Quality Control Plan. We understand that the Hoopa Valley Tribe and the Regional Board have agreed to use the Regional Board's TMDL process as the forum for resolving any technical questions about the best methodology for establishing Natural Conditions reference numbers. See Email from Maria Rea, EPA, to Louisa McConnell, Hoopa Valley Tribe, *et al.* dated March 7, 2007.

EPA's policy on natural conditions suggests that the methodology should be able to generate specific, reproducible natural conditions reference numbers (see memorandum from Tudor Davies, "*Establishing Site Specific Aquatic Life Criteria Equal to Natural Background*," November 5, 1997). EPA is approving these revised and new criteria with the understanding that unless and until the Hoopa Valley Tribe completes the process of establishing Natural Condition reference conditions, the stated numerical criteria (at page 52 for nutrient criteria and dissolved oxygen) of these amendments to the Water Quality Control Plan will constitute the operative criteria for all purposes. As new information and methodologies become available through the TMDL process discussions (as agreed to by the Tribe and Regional Board), that new information will be incorporated into the Tribe's Water Quality Control Plan.

Trinity River Tributaries Temperature Criteria: EPA hereby approves the new Trinity River Tributaries Temperature Criteria, finding that the tributary temperature criteria proposed by the Hoopa Valley Tribe are protective of beneficial uses and were established using the best available science.

## Other Comments Related to the Plan Water Quality Standards

Pursuant to Section 7 of the Endangered Species Act (ESA), EPA is required to consult with the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) regarding potential effects on threatened and endangered species by water quality standards actions under Section 303(c)(3) of the CWA. Additionally, pursuant to a Memorandum of Agreement (MOA) executed amongst the EPA, the USFWS and the NMFS (66 FR 11202, February 22, 2001) we carried out early informal consultation as set forth in the MOA. EPA finds that the amendments to the Water Quality Control Plan will have no effect on species or critical habitat under the jurisdiction of the USFWS. Based on a biological evaluation submitted to the NMFS on December 7, 2007, EPA found that EPA's approval of the amendments to the Water Quality Control Plan is not likely to adversely affect species or their critical habitat under the jurisdiction of the NMFS. Concurrence with this finding was sent to EPA by NMFS in a letter dated February 7, 2008.

EPA understands that reaches of the Mainstem Trinity River upstream of the Hoopa Reservation and reaches upstream and downstream of the Klamath River are subject to the jurisdiction of the Regional Board. EPA's regulations at 40 CFR Section 131.7 provide for a dispute resolution process where inconsistent standards apply to the same water body. At this time, however, EPA is not aware of any inconsistencies in the regulatory programs adopted by the Hoopa Valley Tribe and the Regional Board, and understands that the Hoopa Valley Tribe has been working closely with the Regional Board during the development of these amendments. EPA commends the Hoopa Valley Tribe for its continuing outreach and cooperation with the neighboring California and Tribal regulatory agencies.

EPA intends to continue to work closely with the Hoopa Valley Tribe during the next triennial review. Our aim is to be able to take prompt action on any amendments as well as to provide the Hoopa Valley Tribe with appropriate assistance. Coordination between EPA and the Services is ongoing and we anticipate that CWA/ESA issues concerning the Water Quality Control Plan will be identified and raised during the next triennial review. We also encourage early dialogue between EPA, the Hoopa Valley Tribe, the Regional Board and the Services to identify and resolve water quality standards issues. Once again, EPA commends the Hoopa Valley Tribe for its diligent efforts in developing the amendments to the Water Quality Control Plan. If there are any questions regarding this action, please call me at (415) 972-3572 or have your staff contact Suesan Saucerman at (415) 972-3522. As always, EPA looks forward to continued cooperation with the Hoopa Valley Tribe in achieving our mutual environmental goals.

*Congratulations and best wishes,*

Sincerely,

*Alexis Strauss 14 February 2008*  
Alexis Strauss, Director  
Water Division

cc: Holly Lundborg, NCRWQCB  
Steve Kirk, ODEQ  
Dru Keenan, USEPA R10  
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